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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the State of
competition Among Telecommunications
Providers in California, and to Consider and
Resolve Questions raised in the Limited
Rehearing of Decision 08-09-042

Investigation 15-11-007
(Filed November 5, 2015)

**RESPONSE OF
RESPONDENTS
CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA (U 1024 C)
FRONTIER CALIFORNIA INC. (U 1002 C)
FRONTIER COMMUNICATIONS OF AMERICA, INC. (U 5429 C)
FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U 1026 C)
("FRONTIER")**

**TO MOTION OF AT&T CALIFORNIA (U-1001-C) AND NEW CINGULAR WIRELESS
PCS, LLC (U-3060-C) TO STRIKE PORTIONS OF ORA REPLY BRIEF**

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September 30, 2016

1 Pursuant to Rule 11.1(e) of the California Public Utilities Commission's ("Commission")
2 Rules of Practice and Procedure, Citizens Telecommunications Company of California Inc., d/b/a
3 Frontier Communications of California, Frontier Communications of the Southwest Inc., Frontier
4 Communications of America, Inc. and Frontier California Inc. f/k/a Verizon California Inc.
5 (collectively, "Frontier") hereby respond in support of the Motion of AT&T California and New
6 Cingular Wireless PCS, LLC (collectively "AT&T") to Strike Portions of ORA Reply Brief
7 ("AT&T's Motion").

8 As explained in AT&T's Motion, the referenced portions of ORA's Reply constitute new
9 economic testimony to which the parties have not had a fair opportunity to respond in violation of
10 the Scoping Memo¹ and the parties' due process rights. As noted by AT&T, this new testimony
11 "should have been submitted as part of ORA's July 15, 2016 reply testimony or raised at the expert
12 panel on July 20, 2016."² Instead, when the subject of the new economic testimony was
13 specifically raised at the expert panel, ORA's witness Dr. Selwyn remained silent.³

14 The new testimony also violates the well-established rule prohibiting the introduction of
15 new evidence in reply briefs. *See, e.g.*, D.02-08-064 at 36-38 (striking portions of Southwest's
16 reply brief that introduced new evidence because the County and ORA did not have "an
17 opportunity to either respond or test the reliability or validity of this evidence."); *see also Jay v.*
18 *Mahaffey* (2013) 218 Cal.App.4th 1522, 1537–1538, ("The general rule of motion practice . . . is
19 that new evidence is not permitted with reply papers."); *Marriage of Hoffmeister* (1984) 161
20 Cal.App.3d 1163, 1171.

21 ORA's assertion of new economic testimony on reply is unfairly prejudicial as the
22

23 ¹ Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge at 14 (July 1, 2016)
24 (limiting the parties to rebuttal/supplemental testimony in order to "reply to the testimony submitted
25 through June 1, 2016, and/or to provide the Commission with any further analysis or recommended view of
the marketplace[.]").

25 ² AT&T's Motion at 1.

26 ³ AT&T's Motion at 2; 7/20/16 Tr. at 86.
27
28

1 Commission denied the parties' requests for additional rounds of testimony and full evidentiary
2 hearings.⁴ As a result, Frontier did not have sufficient time to retain an expert or to prepare
3 testimony addressing all of the issues in the Scoping Memo and responding to the several
4 hundreds of pages of testimony submitted by the Intervenors.

5 For the reasons set forth above and in AT&T's Motion, Frontier requests that the
6 Commission strike the untested new economic testimony in ORA's Reply Brief as identified in
7 AT&T's Motion.

8 Dated this 30th day of September, 2016, at San Francisco, California.

9 Respectfully submitted,

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24 _____
25 ⁴ Prehearing Conference Statements (June 15, 2016) and Scoping Memo; Motion for Extension of
26 Procedural Deadlines in the July 1, 2016 Scoping Memo and Ruling of Assigned Commissioner and
27 Administrative Law Judge and Respondents' Request for Rehearing of Scoping Memo Ruling on
28 Evidentiary Hearings (July 11, 2016); Assigned Commissioner and Administrative Law Judge's Ruling Re:
7/20/16 Evidentiary Hearing and Denying Related Party Motions (July 13, 2016).